



Advisory Opinion 08-029

This is an opinion of the Commissioner of Administration issued pursuant to Minnesota Statutes, section 13.072 (2007). It is based on the facts and information available to the Commissioner as described below.

Facts and Procedural History:

On August 11, 2008, the Information Policy Analysis Division (IPAD) received a letter dated August 6, 2008, from Vadim Lavrusik, Co-Publisher and Editor in Chief, of *The Minnesota Daily*. In his letter, Mr. Lavrusik asked the Commissioner to issue an advisory opinion regarding his right to gain access to certain data from the University of Minnesota.

IPAD, on behalf of the Commissioner, wrote to Tracy Smith, Associate General Counsel of the University, in response to Mr. Lavrusik's request. The purposes of this letter, dated August 18, 2008, were to inform her of Mr. Lavrusik's request and to ask her to provide information or support for the University's position. On September 5, 2008, IPAD received a response, dated same, from Ms. Smith.

A summary of the facts as provided by Mr. Lavrusik is as follows. On June 26, 2008, newspaper staff requested data:

...I request annual athletically related income reports from head coaches Tubby Smith, Tim Brewster, J. Robinson and Don Lucia for the past 10 years, where applicable, or all data available if the coach has been here for a shorter time than that....

The University responded by stating, "Their outside income reporting is considered private personnel data under M.S. 13.43 and cannot be released."

Issue:

Based on Mr. Lavrusik's opinion request, the Commissioner agreed to address the following issue:

Did the University of Minnesota comply with Minnesota Statutes, Chapter 13, in responding to a data request for "annual athletically related income reports from head coaches Tubby Smith, Tim Brewster, J. Robinson and Don Lucia for the past 10 years?"

Discussion:

Pursuant to Minnesota Statutes, Chapter 13, government data are public unless otherwise classified. (Minnesota Statutes, section 13.03, subdivision 1.)

Minnesota Statutes, section 13.43 classifies data on individuals who are current or former employees of a government entity. Section 13.43, subdivision 2 lists the types of personnel data that are public and subdivision 4 classifies most other types of personnel data as private.

Pursuant to section 13.43, subdivision 2(a)(1), the following data related to an employee's salary are public: "actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer paid fringe benefits; and the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary."

In her comments to the Commissioner, Ms. Smith wrote:

The Board of Regents of the University of Minnesota maintains policies requiring covered University employees, including head coaches, to report their outside activities in order to identify and manage potential individual conflicts of interest....

The report that employees must file is a "Report of External Professional Activities" or "REPA" report....In REPA reports, University employees identify their external professional activities and financial or business interests, and must disclose whether they earn or have an interest in excess of \$10,000. Employees are not required to report the amount of their outside compensation in further detail.

As covered employees under these University policies, head coaches are required to file REPA reports identifying their outside activities. This requirement, which applies to all covered University employees, is reinforced for coaches by NCAA regulations. NCAA Bylaw 11.2.2 requires that contracts with coaches include a stipulation that coaches submit reports to their educational institution concerning athletically related income from sources outside the institution. University coaches' contracts include this stipulation, and this reporting requirement for outside athletically related income is satisfied by the REPA report the coaches are already required to file.

...The University requires individuals to submit REPA reports about their outside income because those individuals are University employees. The data in the reports are clearly personnel data.

Ms. Smith then asserted that the data in question are classified as private. She stated that the financial terms listed in section 13.43, subdivision 2(a)(1), all relate to the employee's employment with the government entity.

...with respect to the financial terms listed in the statute: "actual gross salary; salary range; contract fees; actual gross pension; the value and nature of employer fringe benefits" all relate to the employee's employment with the government entity.

The last phrase in the list of financial information – “the basis for and the amount of any added remuneration, including expense reimbursement, in addition to salary”...relates to the employee’s public employment. There is no support, in the language of the statute or elsewhere, for the conclusion that this phrase...relates also to the employee’s outside private employment. On the contrary, the phrase itself clearly relates to remuneration paid to the employee by the public employer – the example of “expense reimbursement” paid “in addition to salary” refers to compensation paid by the government entity to the employee. When the government entity remunerates the employee through salary, expense reimbursement, bonuses, and so on, those data are public. If the employee by the government entity is required to report income he or she has earned from an outside source, in contrast, that is private personnel data.

The *Daily* suggests that this conclusion should not hold for head coaches, because, it asserts, a coach’s compensation package from the University “relies only partially” on University compensation, and that the University “is directly involved in arranging and negotiating” outside income for the coaches. Neither proposition is accurate, however. First, the University’s compensation to coaches is based on a number of factors, including experience, academic success, athletic success, and the Big Ten and national markets for head coaches, and does not rely on the coaches’ outside employment. Coaches who run camps do so through their own private businesses. Those camps are not run by the University of Minnesota....Coaches are no different from other University employees who also hold employment outside the University, including physicians, pharmacists, law professors, and other faculty members offering consulting services. Coaches’ outside income is no more public than the outside income of these other public employees.

The data requested by the newspaper about each of the four coaches, “annual athletically related income reports,” are collected, created, received because the coaches are employees of the University. Therefore, the data are personnel data and classified by section 13.43.

The Commissioner agrees with Ms. Smith that the financial data listed as public under section 13.43, subdivision 2(a)(1), relate to the coaches’ employment at the University; not to outside income they may be earning. In the Commissioner’s opinion, if the Legislature intended for these kinds of data to be public, the Legislature would clearly have so stated. Therefore, because that is not what section 13.43, subdivision 2(a)(1), says, the data in question are private.

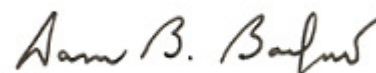
The following note is appropriate. As discussed above, the “value and nature of any employer paid fringe benefits” and “the amount of any added remuneration, including expense reimbursement, in addition to salary” are public pursuant to section 13.43, subdivision 2(a)(1). Thus, if, for instance, one of the coaches ran an athletic camp or was filming commercials for a particular sponsor and was allowed to do so during time for which he was being paid to work, this would amount to a paid fringe benefit or added remuneration from the University and would be considered public data.

Opinion:

Based on the facts and information provided, my opinion on the issue that Mr. Lavrusik raised is as follows:

The University of Minnesota complied with Minnesota Statutes, Chapter 13, in responding to a data request for “annual athletically related income reports from head coaches Tubby Smith, Tim Brewster, J. Robinson and Don Lucia for the past 10 years.” The data are private pursuant to Minnesota Statutes, section 13.43.

Signed:



Dana B. Badgerow
Commissioner

Dated:

September 29, 2008